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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,767	05/12/2005	Alain Durr	16528.2a.3a	8884
22913	7590	06/22/2010	EXAMINER	
Workman Nydegger 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			KASHNIKOW, ERIK	
			ART UNIT	PAPER NUMBER
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			06/22/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/534,767

**Applicant(s)**

DURR, ALAIN

**Examiner**

ERIK KASHNIKOV

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-8 and 10-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8 and 10-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 04/07/2010
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 11-12, 14-16, 20, 21 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cavanagh et al. (US 3,955,020) in view of Block (FR 2731210).
3. In regards to claim 1 Cavanagh et al. teaches a bottle with a multilayer plastic laminate (column 1 lines 53-67). Cavanagh et al. teach that one of the plastic layers can be of a generally opaque design (Abs) and is made so by adding pigment (Cavanagh column 5 lines 5-15), which would allow one of ordinary skill in the art to adjust the amount of light let through, if any. It is well within the ability of one of ordinary skill in the art at the time of the invention to adjust the pigment to achieve different levels of light passing through the container. One of ordinary skill in the art would be motivated to do so, based on the end use of the bottle. Examiner also points out that the broadest possible definition of the term "generally opaque" would allow for some light transmittance. Therefore, it is clear that the plastic layers of Cavanagh have limited transparency as presently claimed.

4. Cavanagh et al. also teach that the covering can cover from the bottom of the bottle to the shoulders at the top of the bottle (column 4 lines 54-55).
5. In regards to claim 2 Cavanagh et al. teach that the opaqueness of the bottle can be caused by a coloring material to the one of the plastic layers (claim 4)
6. In regards to claim 3 Cavanagh et al. teach that the layers on the outside of the bottle can be formed from polyethylene, polyvinylchloride, and others (column 4 lines 65-68).
7. In regards to claim 4 Cavanagh et al. show in figure 2 that the plastic layer is laying fully against the container wall.
8. In regards to claim 11 Examiner points out that a vial is defined by dictionary.com as a glass vessel or bottle, especially for use for medicines (<http://dictionary.reference.com/browse/vial>). As Cavanagh et al. teach that the laminate of their invention is to be used for bottles, one of ordinary skill in the art at the time of the invention would realize that this includes vials.
9. In regards to claim 12 it is well known that medicines can be in liquid form, as such it would be well within the ability of one of ordinary skill in the art to put medicine into the bottle of Cavanagh as discussed above. One of ordinary skill in the art at the time of the invention would be motivated to do this to help limit the risk of losing medicine due to inadequate protection of the bottle.
10. While Cavanagh et al are silent regarding the plastic layer covering the entire bottle, they do teach that the plastic layers cover the entire straight portion of the bottle, but that further protection to the heel and shoulders can be added (column 2 lines 49-

51). Cavanaugh et al. also teach that the plastic layer can be further combined with plastic caps for the head and heel of the bottle. This embodiment would be obvious to one of ordinary skill in the art as it would offer even more protection to the bottle. It would be well within the ability of one of ordinary skill in the art at the time of the invention to extend the plastic layers to cover these portions of the bottle. One would be motivated to extend the plastic layers to increase the protection offered by the layers.

11. As stated above Cavanaugh et al. teach a multilayer laminate attached to the outside of a bottle. However they are silent regarding the laminate being in the form of half shells.

12. Block teaches an article for protecting bottles.

13. In regards to claims 1, 14 and 24 the protective article of Block comprises 2 "bottle projections" (1<sup>st</sup> page 7<sup>th</sup> and 8<sup>th</sup> paragraphs and Figure 1d) which one of ordinary skill in the art would recognize as half, that is configured to lie fully against the container wall (Fig. 1d). Block teaches that the half

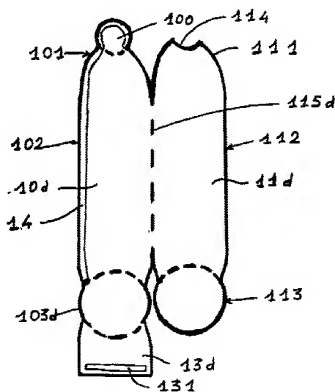


Fig 1d

shells are formed from a single piece and are joined by a line of folding (2<sup>nd</sup> page 3<sup>rd</sup> full paragraph, reference 115d in Fig. 1d) the edge of the first shell and the edge of the second shell are kept in direct contact. One of ordinary skill in the art would recognize

that the line of folding would mean that the two sides are hingedly connected, it is also noted that line of folding in figure 1d of block is the same as the hinge in figures 2 and 3 of the instant application.

14. The limitation for claim 15 and 16 has been discussed in the rejection above.

15. In regards to claims 20, 21 and 25, figure 1d shows embodiments wherein the line of folding (also the generatrix) is substantially the same as the entire length of the bottle, a preformed shoulder portion that accurately extends between the body and neck portion connecting them as well as portions wherein the neck portion protrudes away from the first and second half shells and extends around the entire neck (Figs 1b, 1c, 1d, 2d and 3c). Further Block teaches that the neck of the bottle is to be covered (1<sup>st</sup> page 10<sup>th</sup> paragraph).

16. In regards to claim 26, Examiner is treating it as a product by process claim, specifically regarding the term "wherein the jacket is preformed by a deep drawing process". It has been shown that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113 and *In re Thorpe*, 777F.2d 695, 698, 227 USPQ 964, 966).

17. One of ordinary skill in the art at the time of the invention would be motivated to modify the plastic film used to cover bottles of Cavanagh with the half shell shape

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plastic film design used to cover bottles of Block, because the design of Block offers increased protection of bottles, increased ability to adapt to the bottles and to allow the introduction of the bottle after introduction of the last closing of the package (1<sup>st</sup> page 4<sup>th</sup> paragraph).

18. Claim 6-8, 10, 13, 17-19 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cavanagh et al. (US 3,955,920) in view of Block (FR 2731210) and Witkowski (US 5,525,383).

19. As stated above Cavanagh et al. and Block teach a multilayer laminate attached to the outside of a bottle including embodiments wherein no adhesive is applied between the bottle and the jacket (Block 2nd page first full paragraph). However they are silent regarding the inclusion of tape to seal the half shells.

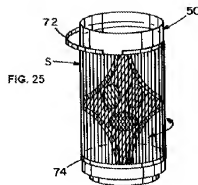
20. Witkowski teaches a liquid container (column 2 line 19), with a tubular sleeve mounted on the outside wall of the container (column 2 line33). Witkowski also teaches that the tubular sleeve can be made of any plastic film (column 4 lines 59-61), and can be transparent or translucent (column 4 line 20-21).

21. In regards to claim 6, 17 and 22 as stated above Witkowski teaches that the sleeve can be formed by a sheet of any plastic material. Witkowski teaches that the sheets are formed into a tube (column 5 line 16). Witkowski teaches that the plastic film wrapped around the container can be closed by tape (column 5 line 18).

22. In regards to claim 7, 18 and 19 Witkowski et al teach that the sheet can be printed on while on the container, which would require that the design be printed onto

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the tape that is holding the clam shells together (column 4 lines 45-51). It is obvious to one of ordinary skill in the art that if an object can be printed on it may also be written on. Further it is obvious that any tape that may be printed on may also be any different color.



23. In regards to claim 23 it is further noted that matters relating to ornamentation only which have no mechanical function cannot be relied upon to differentiate from the prior art (MPEP 2144.04 I).
24. to patentably distinguish the claimed invention from the prior art
25. In regards to claim 8 Cavanagh et al. teach that the outer layer is attached to the container by use of an adhesive (column 5 line 60 column 6 line 20).
26. In regards to claim 10 Witkowski teaches that the claimed invention can be used to hold different ingredients such as beer or soda (column 1 lines 21-22). Making it so all the containers are identical except for a number or letter on the outer side of the container is just a design choice, and would have been an obvious variant to one of ordinary skill in the art at the time of the invention.
27. Also in regards to claim 10 Cavanagh teaches that the inner lamina **may** be opaque, and is made so by adding pigment (Cavanagh column 5 lines 5-15). It is further noted that all other limitations of this claim have been discussed previously in this office action.
28. In regards to claim 13 Witkowski et al. shows an example in Fig 25, and column 9 lines 25-37 wherein the tape completely encircles the container.



29. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the inventions of Cavanagh and Block with the invention of Witkowski because the invention of Cavanagh and Block provides an attractive decoration as well as protection for a wide variety of containers against shattering and scattering of broken glass pieces if the container manages to break (column 1 lines 55-60), while the invention of Witkowski also offers a wide variety of decorating options as well as being inexpensive and durable (column 1 lines 24-28).

### ***Response to Arguments***

30. Applicant's arguments regarding the Norwood rejection are moot in view of the new grounds of rejection.

31. In response to Applicant's arguments regarding Block and Witkowski Examiner notes that while Block and Witkowski does not disclose all the features of the present claimed invention, they are used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references.

***Conclusion***

32. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow  
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/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1782